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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re AYDEN S., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B237710
2d Juv. No. B238963
(Super. Ct. No. JV 39054)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MIA A., et. al.,

Respondents and Appellants.

Mia A. (Mother) and Gerald S. (Father), the biological parents of Ayden S., appeal from the juvenile court's jurisdictional and dispositional orders. They contend the orders exercising jurisdiction over Ayden under Welfare & Institutions Code, section 300, subdivision (b)¹ and placing him in foster care are not supported by substantial evidence. We ordered the parents' individual appeals consolidated and now affirm.

¹ All statutory references are to the Welfare & Institutions Code unless otherwise stated.

Facts

Ayden was born in March 2011. By October 2011, respondent had received four referrals from law enforcement and extended family members who expressed concern about the infant's welfare and the parents' substance abuse. Among other things, these individuals reported to respondent that Mother and Father were leaving the infant Ayden with random people without provision for his care, such as diapers and food.

Respondent's social workers attempted to visit the family at their apartment at least three times in August and September 2011. Mother and Father evaded the appointments and prevented the social worker from seeing Ayden. On one unannounced visit, the social worker found Ayden, who appeared to be in good health, being watched by an unrelated man. Neither parent was home. When the social worker spoke to Mother, Mother denied leaving Ayden with random people and claimed to have been drug testing regularly. The social worker never obtained independent confirmation of Mother's drug test results.

On September 3, 2011, Mother was arrested and jailed for assault after three women complained to police that she physically attacked them in their driveway at a mobile home park. In early October 2011, a truck rented in Father's name was abandoned after it crashed into a guardrail. Ayden's paternal grandparents informed respondent that Father fell asleep while driving. He was under the influence of drugs at the time. Mother and Ayden were also in the truck with him. The family was involved in a second single car accident around the same time. Mother denied any involvement in the accident.

Ayden was removed from his parents' home on October 7, 2011. When the social worker and police officers arrived to serve the protective custody warrant, Mother and Father refused to answer or open their locked front door, forcing officers to gain entry using a door ram. Mother was arrested for delaying or obstructing an

officer in violation of Penal Code section 148, and the police department recommended that similar charges be filed against Father.

Mother has a lengthy criminal history as well as a history with respondent. She has two older biological sons. Both sons were placed in foster care as a result of Mother's drug abuse. The eldest has been adopted by his maternal grandmother; the younger son is in the process of being adopted by his maternal grandfather.

At the detention hearing, Mother testified that she has been drug and alcohol free since August 12, 2009. For eight months of that time, she lived in a sober living house, eventually becoming the house manager. In August 2010, Mother moved out of the sober living home and into an apartment. Ayden was born in March 2011. Although Mother did not drug test at the county testing facility as requested by the social worker, she tested at another facility in July, August and October 2011. Each test was negative for all drugs. On November 15, 2011, Mother tested at the county facility. The results of that test were also negative.

Mother had escalating contacts with law enforcement after Ayden's birth. San Luis Obispo police officers responded to the parents' apartment 13 times between August 8, 2011 and October 9, 2011. One of these contacts concerned a reported theft by Mother, two were welfare checks on Ayden, and the remainder concerned disorderly or suspicious behavior. In November 2011, police responded to eight separate complaints of disorderly conduct at the parents' apartment. Mother testified that many of these calls involved domestic violence between Mother and Father. On November 2, 2011, Mother was arrested for burglarizing a neighbor's apartment and possessing property stolen from the apartment. The neighbors reported to police that a laptop, wallet and cell phone were taken from their apartment during the night on November 1. On November 2, Mother walked into the apartment without their permission and returned the stolen laptop.

Meanwhile, Mother continued to drug test voluntarily at a private facility, on days that she chose. While her drug test results were negative, her behavior, including the many law enforcement contacts, indicated to the social worker that she was still using drugs. The social worker testified at the jurisdiction hearing that Mother's behavior was erratic, she exhibited "disjointed thoughts," paranoia and rapid speech. An intake counselor at the county's drug and alcohol services office was also "very concerned about [Mother's] behavior and she believes that [Mother] is using" Because Mother was not willing to admit that she was using drugs, however, the counselor would not allow her to participate in group therapy. The social worker described Mother as "very confrontational and uncooperative with [respondent]" She told the social worker that she did not believe respondent had a valid warrant to detain Ayden in foster care and referred to his detention as an "abduction." Mother also refused to participate in a team decision concerning Ayden because "she does not do anything without her lawyer. [Mother] said that the Department will just use whatever she says against her. She said that she feels that the social worker railroaded her. "

Father had far fewer direct contacts with respondent. He tested positive for marijuana use in November 2011. Father also admitted to using amphetamines during that time, although the drug tests he provided were negative for that drug. Father did not participate in early team decision making meetings with respondent regarding Ayden's placement. In December 2011, Father was in the county jail and expected to be sentenced to one to two years in prison. His request for jail visits with Ayden was granted.

At the conclusion of the jurisdictional hearing on December 1, 2011, the court took jurisdiction over Ayden, finding that the "totality of the circumstances," supported the conclusion Ayden was at substantial risk of physical harm unless he was removed from parental custody. Among the facts the trial court found significant were, "the concern about your potential drug use[,]" the fact that Father

"acknowledged using methamphetamine[,]" the pending criminal matters, "the fact there is significant police conduct and contacts[,]" and the fact the parents' "home did need to be entered by way of a battering ram."

At the uncontested disposition hearing on December 21, 2011, the court ordered both parents be provided reunification services and supervised visits with Ayden. Ayden remained in foster care. Both parents appeal.

Discussion

Mother and Father contend the trial court's jurisdiction and disposition orders are not supported by substantial evidence. In evaluating this contention, we review the entire record to determine whether it discloses substantial evidence supporting the findings of the juvenile court. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) Substantial evidence is evidence which is " 'reasonable, credible, and of solid value ' " (*Id.*, quoting *In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) We accept the juvenile court's credibility determinations, resolve all conflicts in favor of the prevailing party and draw all reasonable inferences in support of the juvenile court's orders. (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 83; *In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1393.) "In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds of reason." (*In re Ricardo L.*, *supra*, 109 Cal.App.4th at p. 564.)

Respondent sought jurisdiction over Ayden under section 300, subdivision (b). The statute provides that a child is within the jurisdiction of the juvenile court if the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." (§ 300, subd. (b).) To find jurisdiction

under section 300, subdivision (b), the juvenile court must find that the child has suffered prior serious physical harm or abuse, or that the child is exposed to a substantial risk of serious physical harm or illness in the future. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1434-1435 [past serious abuse]; *In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1396 [risk of future harm].)

We conclude that substantial evidence supports the juvenile court's finding that Ayden was exposed to a substantial risk of future serious physical harm or illness due to his parents' untreated substance abuse and their violent, often criminal behavior. The evidence showed that Father used illegal drugs and had loud, possibly violent confrontations with Mother. For her part, Mother argued not only with Father, but also with her neighbors and with the social workers, resulting in several arrests for disorderly conduct, theft, assault and unauthorized entry of property. Even if Mother was abstaining from illegal drug use, her behavior was confrontational, disorderly and violent. As a consequence, it was reasonable for the juvenile court to infer that the parents' behavior and lifestyle placed Ayden at substantial risk for physical harm or illness. The court's jurisdictional findings are supported by substantial evidence.

In addition to challenging the juvenile court's jurisdictional order, Mother and Father contend the disposition order, placing Ayden in foster care, was not supported by substantial evidence. We disagree. First, we conclude appellants have forfeited appellate review of this contention because they did not contest the disposition order in the juvenile court. Instead, both parents submitted on respondent's disposition report and its recommendation for foster care; neither requested a contested hearing on the issue. "[S]ubmitting the dispositional issue based on the social worker's recommendation, . . . precludes the parent from challenging the evidence to support the dispositional order because the parent has acquiesced to the recommendation." (*In re N.M.* (2011) 197 Cal.App.4th 159, 167. See also *In re Kevin R.* (2010) 191 Cal.App.4th 676, 685-686.)

Had the issue been preserved for appellate review, we would nevertheless affirm the order because it is supported by substantial evidence. As we noted above, Mother and Father's lives were marked by confrontation, violence, drug abuse and criminality. At the time of the dispositional hearing, they had lost their personal form of transportation, been terminated from their employment and evicted from their apartment. This constitutes substantial evidence that Ayden could not be safely returned to parental custody. (§ 361, subd. (c)(1).)

The jurisdiction and disposition orders are affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

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